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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

February 4, 1997

**EX PARTE**

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street NW  
Washington, DC 20554

Re: CS Docket No. 95-184

Dear Mr. Chairman:

We the undersigned represent the companies that provide competition to the franchised cable operators in the market for local multichannel video programming distribution in multiple dwelling units ("MDUs"). The FCC has found, time and time again, that the multichannel video program distributor ("MVPD") marketplace suffers from a lack of competition. Not ironically, franchised cable operators are advocating an approach that would compound the concentration in that market by urging the Commission to impose a federal mandatory access requirement, which would prohibit exclusive service agreements between MDU owners and MVPDs. For the following reasons, the Commission should reject this approach.

**1. Mandatory access creates a barrier to competition.** Based on our experience with state mandatory access laws, mandatory access creates a barrier to competition, while the ability to negotiate for exclusivity promotes competition. For space and aesthetic reasons, most MDU owners will not allow a second MVPD, let alone multiple MVPDs, to overbuild wiring in an MDU. Moreover, even where MDU owners will allow an overbuild, the economics are often such that most

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MVPDs cannot make the investment required to provide broadband services in an MDU without a reasonable period of exclusivity. As a result, in the 13 states and the District of Columbia that have mandatory access laws, consumers in the vast majority of MDUs may receive service only from the franchised cable operator who, in turn, has little or no incentive to provide high quality services at low prices, because it will never face competition to serve the MDU. By contrast, in states where exclusive service agreements are permitted, vibrant competitive markets have developed for the right to serve MDU residents.

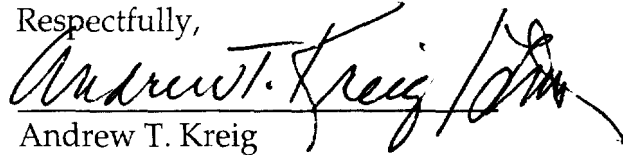
In arguing this issue, franchised cable operators have tried to paint MDU owners as seeking exclusivity only as a means of extracting “kickbacks” from MVPDs, with no concern for the interests of MDU residents. In fact, in the MDUs that are not condominiums or cooperatives, (where the owner’s interests and the residents’ interests are identical), competition for tenants in the real estate market is, in most cases, so intense that it is self-defeating for landlords to shortchange the services available to tenants in order to line their own pockets.

**2. The Broadband Demarcation Point Should Be Accessible To Competing Service Providers.** The current broadband demarcation point serves as a barrier to entry. Presently, the demarcation point is set at 12-inches outside of the residential unit, which is inaccessible in most MDUs. The Commission should establish a “competitive” broadband demarcation point that would provide competing MVPDs with a realistic point of access to the MDU residents without extensive overbuilding. Thus, the “competitive” broadband demarcation point should be at the point at which the wire becomes dedicated to an individual residential unit or, in the alternative, at a point of entry that is negotiated between an MDU owner and MVPD.

**3. The Commission Should Apply “Fresh Look” to Perpetual Agreements.** In the 1970s and 1980s, franchised cable operators were able to secure service agreements with MDU owners that provide the franchised operator with exclusive service rights effectively in perpetuity. Often these agreements are tied to the duration of the cable franchise and any renewals or extensions thereof. If there is ever to be competition in these MDUs, the MDU owners must be given a limited opportunity to renegotiate these agreements. We suggest that the Commission

apply its "fresh look" doctrine to these perpetual exclusive contracts to allow MDU residents everywhere to enjoy the benefits of competition.

Respectfully,



Andrew T. Kreig  
Acting President  
Wireless Cable Association International, Inc.

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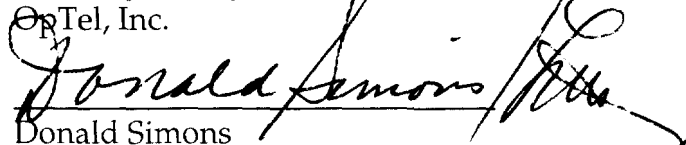
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Vice President - Regulatory Affairs  
GTE Service Corporation



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Chief Operating Officer  
OpTel, Inc.



Donald Simons  
Director - Regulatory Affairs  
MultiTechnology Systems, Inc.

cc: William F. Caton  
Commissioner James H. Quello  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
Julius Genachowski  
Marsha McBride  
Suzanne Toller  
Anita Wallgren  
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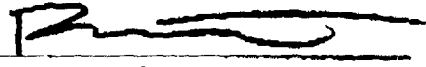
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